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BRIAN ROFFE, ESQ
11 SUNRISE PLAZA, SUITE 303
VALLEY STREAM, NY 11580-6111

EXAMINER	
TO, TOAN C	
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GROUP 3600

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/058,706
Filing Date: January 28, 2002
Appellant(s): BREED ET AL.

Mr. Roffe, Brian
For Appellant

EXAMINER'S ANSWER

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,039,139	Breed et al	03-2000
6,199,902	Cooper et al	03-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-5, 7-21, and 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooper et al (U.S. 6,199,902) is appropriate light of a claim of priority of the present application under 35 U.S.C 120. Whether or not the claimed invention is entitle to benefit of the filing date of a grandparent application Series No. 09/047,703 now U.S. Patent No. 6,039,139 (the '139 patent) which predates the effective filling date of Cooper et al and thus would remove the availability of Cooper et al as a prior art against the patentability of claims 1-5, 7-21, and 23-24.

(10) Response to Argument

In response to appellant's arguments the claimed subject matter, in particular the rejected independent claims 1, 15, 23 and 24 are fully supported in the '139 patent; and therefore, the present application is entitled to the earlier filing date (March 25, 1998) of U.S patent application series No. 09/047,703, (now U.S. Patent No. 6,039,139, the '139 patent) which predates the effective filing date (February 12, 1999) of Cooper et al (U.S. 6,199,902), then the Cooper et al is not available as prior art and the rejection of claims should be removed. The examiner respectfully disagrees because the following reasons:

The '139 patent does not fully support the following recitations: (1) ***"detecting whether absorption of the energy signal by a vehicle occupant occurs"***; (2) ***"providing an absorption signal"***; (3) "***processing the absorption signal to determine at least one occupant characteristic***" as recited in independent claims 1, 15, 23 and 24, in the manner provided by 35 U.S.C 112 first paragraph as required by 35 U.S.C 120.

According to a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

In this case, the specification of the '139 patent does not describe the above recitations (1), (2) and (3) in such ***full, clear, concise, and exact term***, for example "absorption of the energy signal", "providing an absorption signal" and "processing the absorption signal" are not found in the '139 patent. For this reason alone, the '139 patent is considered to not fully support the claimed subject matter.

In response to the appellant's chart for proving that recitations (1), (2) and (3) of claims 1, 15, 23 and 24 are fully supported by the '139 patent, it is noted that nowhere in the '139 patent mentioned about "absorption of the energy signal", "providing an absorption signal" and "processing the absorption signal". Even if assuming, it is inherent that some of the transmitted waves or energy are absorbed by the occupant, but when taking the scope of the claims as a whole, the '139 patent does not reasonably provide enablement for recitations (1), (2) and (3). For this reason alone, appellant's arguments are not found persuasive.

In response to appellant's arguments in pages 8-9 of the brief regarding recitations (1), (2) and (3) are inherently disclosed by the '139 patent. The examiner respectfully disagrees because in order to prove that the '139 patent inherently disclose recitations (1), (2) and (3), the appellant must provide evidence tending to show inherency. The fact that a certain result or characteristics such as "absorption of electromagnetic energy by the human body", or "absorption of ultrasonic energy by the human body" as pointed out by appellant may occur or be present in the '139 patent is not sufficient to establish the inherency of that result because inherency was based on what would result due to optimization of conditions. Appellant also fails to provide the extrinsic evidence to make clear that the missing descriptive matter such as recitations (1), (2) and (3) are necessarily present in the '139 patent, and that it would be so recognized by persons of ordinary skill. Subject matter as pointed out by appellant in pages 9-10 of the brief are considered probabilities or possibilities of "absorption of energy signal" which are produced when either ultrasonic or electromagnetic wave impact human body; however, inherency may not be established by probabilities or possibilities.

For the reasons set forth above, appellant does not has the benefit of early effective filing date of U.S. Patent No. 6,039,139 (filed March 25, 1998), therefore the reference as to Cooper et al is considered to be proper art against the patentability of claims 1-5, 7-21 and 23-24.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

TTo

February 15, 2007

Conferees:

Paul Dickson PD

Meredith Petravick MP

2/20/07

PAUL N. DICKSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600